IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

WP(C).No. 11710 of 2005(R)

OS.237/2001 of PRL.MUNSIFF COURT, CHERTHALA

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PETITIONER:

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1. MADHAVA KINI, S/O. SREEDHARA KINI
THOPPILCHIRA, J.M. NVAS, FROM KALATHIPARAMBU
PUTHENMADOM, PADINJATTINKARA,
VADAKKUM MURI, THURAVOOR NORTH VILLAGE.

2. JAYANTHI BAI, W/O MADHAVA KINI, DO. DO.

BY ADV. SRI.G.GOPAKUMAR (CHERTHALA)
SRI.RASHEED C.NOORANAD

RESPONDENTS:

K. GOVINDAN NAIR, MUNDUPARAMBIL,
JAYA NIVAS, PADINJATTINKARA,
VADAKUM MURI, THURAVOOR NORTH VILLAGE.

BY ADV. SRI.J.OM PRAKASH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO. 11710/2005

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF COMMISISON REPORT IN O.S. 237/01 FILED BY COMMISSIONER BEFORE M.C.SHERTHALAI.

EXT.P2: COPY OF ORDER IN I.A. NO. 835/04 IN O.S. NO. 237/01 OF M.C.SHERTHALA DATED 21.3.2005

/TRUE COPY/

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 11710 of 2005

Dated this the 7th day of June 2007

JUDGMENT

In a suit for fixation of documents filed by the petitioners/plaintiffs, the contention which was seriously raised by the defendant/respondent was one of adverse possession. When the suit was listed for trial, it was submitted on behalf of the plaintiffs that the plaintiffs do not want to adduce evidence at that stage and will adduce only counter evidence with regard to the defendant's claim of adverse possession. Accordingly, the defendant adduced evidence and the defendant's evidence was closed on 4.3.2005. From that day, the case was adjourned to 11.3.2005 for hearing. At that time, he plaintiffs filed I.A. No. 835/2005 seeking permission to adduce counter evidence. The learned Munsiff has dismissed that application by passing impugned order.

2. Heard Sri.G.Gopakumar, the learned counsel for the petitioners and Sri.Om Prakash the learned counsel for the respondent. Mr.Gopakumar submits that it was submitted by the

plaintiffs at the time of commencement of actual trial that the plaintiffs will be adducing only counter evidence regarding the claim of adverse possession, but the evidence of the defendant was closed on 4.3.2005 and without affording an opportunity to the plaintiffs for counter evidence.

3. The learned counsel for the respondent submits that it is true that at the commencement of the trial, the plaintiffs submitted that they will be adducing counter evidence, but when defendant 's evidence was closed, the plaintiffs were not prepared to adduce any counter evidence or even seek time for adducing counter evidence. Therefore, the learned Munsiff cannot be blamed for having passed the impugned order.

4. As I have already indicated, defendant's evidence was closed on 4.3.2005 and it is not seen that any posting whatsoever was given for adducing counter evidence by the plaintiffs. What is seen from the impugned order is that upon the plaintiffs submitting that they did not want to adduce any evidence but at the stage of commencement of the trial and that they only want counter evidence but what the learned Munsiff did was to close the plaintiffs evidence. There is nothing on

record to show the petitioners' unwillingness to adduce any counter evidence to the evidence adduced by the defendant on 4.3.2005. In all probabilities, it is only when they found that the case is posted for hearing after closing the defendant's evidence that it will became necessary for the petitioners to file I.A. 835/2005. I.A. 835/2005, in my opinion, should have been allowed by the learned Munsiff since after all the plaintiffs petitioners do not stand to gain anything by protracting the trial of their own suit.

Result is that Ext.P2 will stand set aside. I.A. 835/2005 will stand allowed. The petitioners will adduce whatever counter evidence they have at their command to the evidence adduced by the defendant on the posting date which comes first after three weeks of production of a copy of this judgment.

PIUS C. KURIAKOSE,
JUDGE.

dpk